

Judge Hellerstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER SITE LITIGATION

21 MC 100 (AKH)
(ECF)

-----X
DAVID PLANKEN AND MIROSLAVA GUZMAN-PLANKEN,

Plaintiffs,

SUMMONS

08 CV

7568

-against-

Jury Trial
Demanded

THE CITY OF NEW YORK, and
AMEC CONSTRUCTION MANAGEMENT, INC., *et al.*

Defendants.
-----X

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon:

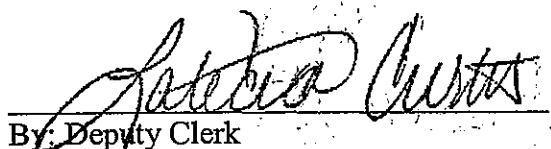
Plaintiffs' Attorney: Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Floor
New York, New York 10271
212/732.9000

an Answer to the Complaint that is herein served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

J. MICHAEL McMAHON

Clerk

Date


By: Deputy Clerk

AUG 27 2008

Date

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TO:

AMEC CONSTRUCTION
MANAGEMENT, INC. and other AMEC entities
c/o Tara Saybe
Patton Boggs LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

BOVIS LEND LEASE, LMB, INC.
and other BOVIS entities
c/o Mound Cotton Wollan & Greengrass
Mark J. Weber, Esq.
One Battery Park Plaza
New York, NY 10004-1486

TULLY CONSTRUCTION CO., INC.
and other TULLY entities
c/o Tara Saybe
Patton Boggs LLP
1 Riverfront Plaza, 6th Floor
Newark, NJ 07102

TURNER CONSTRUCTION
COMPANY and other
TURNER entities
c/o London Fisher LLP
Attn: John Starling, Esq.
59 Maiden Lane
New York, NY 10038

CITY OF NEW YORK
By: Corporation Counsel
100 Church Street
New York, New York 10007

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

DAVID PLANKEN AND MIROSLAVA
GUZMAN-PLANKEN,

Plaintiffs,

- against -

THE CITY OF NEW YORK, and AMEC
CONSTRUCTION MANAGEMENT, INC., *et al.*

Defendants.

21 MC 100 (AKH)

DOCKET NO.

**CHECK-OFF ("SHORT FORM")
COMPLAINT
RELATED TO THE
MASTER COMPLAINT**

**PLAINTIFFS DEMAND A TRIAL BY
JURY**

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaints are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "☒" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiff, by his attorneys SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO, P.C. complaining of Defendants, respectfully alleges:

I. PARTIES

PLAINTIFF(S)

1. ☒ Plaintiff DAVID PLANKEN (hereinafter the "Injured Plaintiff"), is an individual and a citizen of New York residing at 100 West Broadway, Apt. 2P, Long Beach, New York 11561.
2. Alternatively, ☐ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as of the Estate of _____.
3. ☒ Plaintiff, MIROSLAVA GUZMAN-PLANKEN (hereinafter the "Derivative Plaintiff"), is an individual and a citizen of New York residing at 100 West Broadway, Apt. 2P, Long Beach, New York 11561, and has the following relationship to the Injured Plaintiff:

☒ Plaintiff MIROSLAVA GUZMAN-PLANKEN at all relevant times herein, is and has been lawfully married to Plaintiff DAVID PLANKEN, and brings this derivative action for her loss due to the injuries sustained by her husband, Plaintiff DAVID PLANKEN.

☐ Parent ☐ Child ☐ Other: _____

4. In the period from September 11, 2001 through the end of September 2001, and thereafter, including December 2001, March 2002, April 2002 and May 2002, the injured Plaintiff worked in the capacity of a firefighter under the direction and supervision of the New York City Fire Department at:

Please be as specific as possible when filling in the following date and locations.

☒ The World Trade Center Site

Location(s) (i.e., building, quadrant, etc.) throughout the four quadrants.

On September 11, 2001 from about 11:30 a.m. until the early morning of September 12, 2001. Thereafter, the plaintiff worked at the World Trade Center Site in December 2001, March 2002, April 2002 and May 2002, working at least 12 hours per shift.

☐ The New York City Medical Examiner's Office

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ The Fresh Kills Landfill

☐ The Barge

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

☐ **Other:*** For injured plaintiffs who worked at Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total;
Name and Address of Non-WTC Site
Building/Worksite: _____

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

☒ Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;

☒ Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;

☒ Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;

☐ Other: _____

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6. Injured Plaintiff

- ☒ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

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B. DEFENDANT(S)

7. The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

X THE CITY OF NEW YORK

- ☐ A Notice of Claim was timely filed and served on _____ and
☐ pursuant to General Municipal Law §50-h the CITY held a hearing on _____ (OR)
☐ The City has yet to hold a hearing as required by General Municipal Law §50-h
☐ More than thirty days have passed and the City has not adjusted the claim
 (OR)

X A Petition/application to

X deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc* (for leave to file a late Notice of Claim *Nunc Pro Tunc*) has been filed and a determination

X is pending

- ☐ Granting petition was made on _____
☐ Denying petition was made on _____

 PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"]

- ☐ A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The ~~Unconsolidated Laws of the State of New York~~ on
☐ More than sixty days have elapsed since the Notice of Claim was filed, (and)
☐ the PORT AUTHORITY has adjusted this claim
☐ the PORT AUTHORITY has not adjusted this claim.

- ☐ 1 WORLD TRADE CENTER, LLC
☐ 1 WTC HOLDINGS, LLC
☐ 2 WORLD TRADE CENTER, LLC
☐ 2 WTC HOLDINGS, LLC
☐ 4 WORLD TRADE CENTER, LLC
☐ 4 WTC HOLDINGS, LLC
☐ 5 WORLD TRADE CENTER, LLC

- ☐ 5 WTC HOLDINGS, LLC
X AMEC CONSTRUCTION MANAGEMENT, INC.
☐ 7 WORLD TRADE COMPANY, L.P.
☐ A RUSSO WRECKING
☐ ABM INDUSTRIES, INC.
☐ ABM JANITORIAL NORTHEAST, INC.
X AMEC EARTH & ENVIRONMENTAL, INC.
☐ DAVID CORTESE SPECIALIZED HAULING, LLC, INC.
☐ ATLANTIC HEYDT CORP
☐ BECHTEL ASSOCIATES PROFESSIONAL CORPORATION
☐ BECHTEL CONSTRUCTION, INC.
☐ BECHTEL CORPORATION
☐ BECHTEL ENVIRONMENTAL, INC.
☐ BERKEL & COMPANY, CONTRACTORS, INC.
☐ BIG APPLE WRECKING & CONSTRUCTION CORP
X BOVIS LEND LEASE, INC.
X BOVIS LEND LEASE LMB, INC.
☐ BREEZE CARTING CORP
☐ BREEZE NATIONAL, INC.
☐ BRER-FOUR TRANSPORTATION CORP.
☐ BURO HAPPOLD CONSULTING ENGINEERS, P.C.
☐ C.B. CONTRACTING CORP
☐ CANRON CONSTRUCTION CORP
☐ CANTOR SEINUK GROUP
☐ CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
☐ CORD CONTRACTING CO., INC
☐ CRAIG TEST BORING COMPANY INC.
☐ DAKOTA DEMO-TECH
☐ DIAMOND POINT EXCAVATING CORP
☐ DIEGO CONSTRUCTION, INC.
☐ DIVERSIFIED CARTING, INC.
☐ DMT ENTERPRISE, INC.
☐ D'ONOFRIO GENERAL CONTRACTORS CORP
☐ EAGLE LEASING & INDUSTRIAL SUPPLY

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☐ EAGLE ONE ROOFING CONTRACTORS INC.
☐ EAGLE SCAFFOLDING CO
☐ EJ DAVIES, INC.
☐ EN-TECH CORP
☐ ET ENVIRONMENTAL
☐ EVERGREEN RECYCLING OF CORONA
☐ EWELL W. FINLEY, P.C.
☐ EXECUTIVE MEDICAL SERVICES, P.C.
☐ F&G MECHANICAL, INC.
☐ FLEET TRUCKING, INC.
☐ FRANCIS A. LEE COMPANY, A CORPORATION
☐ FTI TRUCKING
☐ GILSANZ MURRAY STEFICEK, LLP
☐ GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC
☐ HALLEN WELDING SERVICE, INC.
☐ H.P. ENVIRONMENTAL
☐ KOCH SKANSKA INC.
☐ LAQUILA CONSTRUCTION INC
☐ LASTRADA GENERAL CONTRACTING CORP
☐ LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C.
☐ LIBERTY MUTUAL GROUP
☐ LOCKWOOD KESSLER & BARTLETT, INC.
☐ LUCIUS PITKIN, INC
☐ LZA TECH-DIV OF THORTON TOMASETTI
☐ MANAFORT BROTHERS, INC.
☐ MAZZOCCHI WRECKING, INC.
☐ MERIDIAN CONSTRUCTION CORP.
☐ MORETRENCH AMERICAN CORP.
☐ MRA ENGINEERING P.C.
☐ MUESER RUTLEDGE CONSULTING ENGINEERS
☐ NACIREMA INDUSTRIES INCORPORATED
☐ NEW YORK CRANE & EQUIPMENT CORP.
☐ NICHOLSON CONSTRUCTION COMPANY
☐ OLYMPIC PLUMBING & HEATING
☐ PETER SCALAMANDRE & SONS, INC.
☐ PINNACLE ENVIRONMENTAL CORP
☐ PLAZA CONSTRUCTION CORP.

☐ PLAZA CONSTRUCTION MANAGEMENT CORP.
☐ PRO SAFETY SERVICES, LLC
☐ PT & L CONTRACTING CORP
☐ REGIONAL SCAFFOLD & HOISTING CO, INC.
☐ ROBER SILMAN ASSOCIATES
☐ ROBERT L GEROSA, INC
☐ RODAR ENTERPRISES, INC.
☐ ROYAL GM INC.
☐ SAB TRUCKING INC.
☐ SAFEWAY ENVIRONMENTAL CORP
☐ SEASONS INDUSTRIAL CONTRACTING
☐ SEMCOR EQUIPMENT & MANUFACTURING CORP.
☐ SILVERITE CONTRACTORS
☐ SILVERSTEIN PROPERTIES
☐ SILVERSTEIN PROPERTIES, INC.
☐ SILVERSTEIN WTC FACILITY MANAGER, LLC
☐ SILVERSTEIN WTC, LLC
☐ SILVERSTEIN WTC MANAGEMENT CO., LLC
☐ SILVERSTEIN WTC PROPERTIES, LLC
☐ SILVERSTEIN DEVELOPMENT CORP.
☐ SILVERSTEIN WTC PROPERTIES LLC
☐ SIMPSON GUMPERTZ & HEGER INC
☐ SKIDMORE OWINGS & MERRILL LLP
☐ SURVIVAIR
☐ TISHMAN INTERIORS CORPORATION,
☐ TISHMAN SPEYER PROPERTIES,
☐ TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN
☐ TISHMAN CONSTRUCTION CORPORATION OF NEW YORK
☐ THORNTON-TOMASETTI GROUP, INC.
☐ TORRETTA TRUCKING, INC
☐ TOTAL SAFETY CONSULTING, L.L.C
☐ TUCCI EQUIPMENT RENTAL CORP
☒ TULLY CONSTRUCTION CO., INC.
☒ TULLY ENVIRONMENTAL INC.
☒ TULLY INDUSTRIES, INC.
☒ TURNER CONSTRUCTION CO.

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☒ TURNER CONSTRUCTION COMPANY
☒ TURNER CONSTRUCTION INTERNATIONAL, LLC
☐ TURNER/PLAZA, A JOINT VENTURE
☐ ULTIMATE DEMOLITIONS/CS HAULING
☐ VERIZON NEW YORK INC,
☐ VOLLMER ASSOCIATES LLP
☐ W HARRIS & SONS INC
☐ WEEKS MARINE, INC. ☐ OTHER: _____
☐ WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.

☐ WHITNEY CONTRACTING INC.
☐ WOLKOW-BRAKER ROOFING CORP
☐ WORLD TRADE CENTER PROPERTIES, LLC
☐ WSP CANTOR SEINUK
☐ YANNUZZI & SONS INC
☐ YONKERS CONTRACTING COMPANY, INC.
☐ YORK HUNTER CONSTRUCTION, LLC

☐ Non-WTC Site Building Owner
 Name: _____
 Business/Service Address: _____
 Building/Worksite Address: _____
☐ Non-WTC Site Lessee
 Name: _____
 Business/Service Address: _____
 Building/Worksite Address: _____

☐ Non-WTC Site Building Managing Agent
 Name: _____
 Business/Service Address: _____
 Building/Worksite Address: _____

II. JURISDICTION

8. The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically, ☒ Air Transport Safety & System Stabilization Act of 2001.

III. CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240	<input checked="" type="checkbox"/>	Common Law Negligence, including allegations of Fraud and Misrepresentation
<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6)		<input checked="" type="checkbox"/> Air Quality; <input checked="" type="checkbox"/> Effectiveness of Mask Provided; <input checked="" type="checkbox"/> Effectiveness of Other Safety Equipment Provided

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<input checked="" type="checkbox"/>	Pursuant to New York General Municipal Law §205-a		(specify: _____); <input type="checkbox"/> Other(specify):
<input type="checkbox"/>	Pursuant to New York General Municipal Law §205-e	<input type="checkbox"/>	Wrongful Death
		<input checked="" type="checkbox"/>	Loss of Services/Loss of Consortium for Derivative Plaintiff
		<input type="checkbox"/>	Other: _____

IV CAUSATION, INJURY AND DAMAGE

9. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

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<input type="checkbox"/>	Cancer Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____		<input type="checkbox"/> Cardiovascular Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____
<input checked="" type="checkbox"/>	Respiratory Injury: gastroesophageal reflux disease (GERD); sinusitis; chronic inflammatory sinus disease; retention cysts in the sinuses; polyps in the sinuses; deviated nasal septum; duodenal mucosa demonstrating focal erosion, partial villous abnormality, regenerative changes, nonspecific acute and chronic inflammation, and foveolar metaplasia; esophageal type squamous mucosa demonstrating changes consistent with marked reflux esophagitis with erosion; detached degenerated squamous epithelial cells; duodenitis; esophagitis; gastroduodenitis; sleep apnea; and other injuries, the full extent of which has not yet been determined Date of onset: In June 2007, Plaintiff underwent a physical examination at the Bureau of Health Services, Fire Department of the City of New York. Doctors referred Plaintiff to Alan Schuller, M.D. of West Carver Medical Associates, Huntington, New York for an endoscopy. In September 2007, Plaintiff's nose started to run uncontrollably and he could not breathe. By the end of 2007, Plaintiff was experiencing such a degree of reflux that he finally went to Alan Schuller, M.D., a gastroenterologist in Huntington, New York. Plaintiff also went to Dr. Pender, an otolaryngologist in Long Beach, New York, who provided him with antibiotics and diagnosed him with sinusitis for the first time.	<input type="checkbox"/>	Fear of Cancer Date of onset: _____ Date physician first connected this injury to WTC work: _____

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By January 2008, Dr. Pender found that the antibiotics were not helping Plaintiff. Dr. Pender sent Plaintiff for x-rays. On May 1, 2008, Plaintiff went to Islandwide Medical Imaging. Radiologist Alan B. Greenfield, M.D. administered a CT scan of Plaintiff's paranasal sinuses, and found: "Impression: 1. Chronic inflammatory sinus disease primarily in the maxillary sinuses on both sides... 2. Retention cysts versus polyps are suggested within the bilateral maxillary and left sphenoid sinuses... 3. Deviated nasal septum, convex to the right...."

On May 9, 2008, Plaintiff underwent an endoscopy at Prospect Street Endoscopy, and doctors there diagnosed: "Diagnosis: duodenal mucosa demonstrating focal erosion, partial villous abnormality, regenerative changes, nonspecific acute and chronic inflammation, and foveolar metaplasia... esophageal type squamous mucosa demonstrating changes consistent with marked reflux esophagitis with erosion... detached degenerated squamous epithelial cells... these features may be seen in peptic duodenitis... the lesser density of the eosinophilic infiltrate... favor reflux esophagitis over eosinophilic esophagitis." "Diagnosis: esophagitis; gastroduodenitis."

Based on the above, Dr. Schuller advised that Plaintiff will need to undergo repeat testing to determine whether and how the cells develop.

In or around June 2008, Dr. Samantha Lan of the Bureau of Health Services, Fire Department of New York placed Plaintiff on Nexium and antibiotics and has been treating him for GERD.

Also in June 2008, Dr. Lan referred Plaintiff to New Island Hospital for a sleep study. Based on the results of the study, Dr. Lan diagnosed him with sleep apnea.

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	Date physician first connected this injury to WTC work: December 2007 and thereafter.		
<u>X</u>	Digestive Injury: gastroesophageal reflux disease (GERD); sinusitis; chronic inflammatory sinus disease; retention cysts in the sinuses; polyps in the sinuses; deviated nasal septum; duodenal mucosa demonstrating focal erosion, partial villous abnormality, regenerative changes, nonspecific acute and chronic inflammation, and foveolar metaplasia; esophageal type squamous mucosa demonstrating changes consistent with marked reflux esophagitis with erosion; detached degenerated squamous epithelial cells; duodenitis; esophagitis; gastroduodenitis; sleep apnea; and other injuries, the full extent of which has not yet been determined Date of onset: As set forth above Date physician first connected this injury to WTC work: As set forth above.	<input type="checkbox"/>	Other Injury: Date of onset: _____ Date physician first connected this injury to WTC work: _____

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

10. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

<u>X</u> Pain and suffering	<u>X</u> Expenses for medical care, treatment, and rehabilitation
<u>X</u> Loss of the enjoyment of life	<u>X</u> Other:
<u>X</u> Loss of earnings and/or impairment of earning capacity	<u>X</u> Mental anguish
<u>X</u> Loss of retirement benefits/diminution of retirement benefits	<u>X</u> Disability
	<input type="checkbox"/> Medical monitoring
	<input type="checkbox"/> Other: _____

11. As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

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WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Plaintiffs demand that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
August 27, 2008

Yours, etc.

SULLIVAN PAPAIN BLOCK
MCGRATH & CANNAVO P.C.
Attorneys for Plaintiff

BY: 

Andrew J. Carboy (AC 2147)
120 Broadway - 18th Floor
New York, New York 10271
Tel: (212) 732-9000

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